



FH

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/168445

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 02, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on October 13, 2015, at Neenah, Wisconsin.

The issues for determination are whether Petitioner's appeal is timely as to a modification of a prior authorization request and whether the Division of Hearings and Appeals has authority to extend the time frame of a prior authorization so that approved but unused therapy sessions may be used.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Mary Chucka, OT  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Winnebago County.
2. A prior authorization (PA) request seeking Medicaid payment for 78 occupational therapy sessions was filed on behalf of Petitioner on May 6, 2015. The requested frequency was 3 times per week beginning May 11, 2015 and the total cost noted to be \$15,444.00.

3. After 2 returns to the provider for additional information, this PA was partially approved - 2 sessions per week were approved for the time period of May 11, 2015 through November 11, 2015. A notice dated June 22, 2015 was sent to Petitioner at the above address and notified Petitioner and his family of the approval. Appeal instructions were included and an appeal deadline of August 6, 2015 was noted.
4. This appeal was filed on September 2, 2015.

### **DISCUSSION**

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medicaid matters must be filed within 45 days of the notice of the agency decision. §49.45(5)(a), *Wis. Stats.*

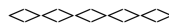
The appeal deadline time limit for challenging the modification in this case was August 6, 2015. The appeal was filed just under a month after that deadline, thus the Division of Hearings and Appeals no longer has authority to make a determination on the merits of this modification.

Petitioner's parents also complain that there is not enough time to complete the approved 52 sessions in by November 11, 2015.

Division of Hearings and Appeals authority is granted by State law and the relevant laws state the following as to that authority:

**(5) APPEAL.** (a) Any person whose application for medical assistance is denied or is not acted upon promptly or who believes that the payments made in the person's behalf have not been properly determined or that his or her eligibility has not been properly determined may file an appeal with the department pursuant to par. (b). Review is unavailable if the decision or failure to act arose more than 45 days before submission of the petition for a hearing.

*Wis. Stats., §49.45(5).*



(b) *Purpose of hearing.* The purpose of the fair hearing is to allow a recipient to appeal department actions which result in the denial, discontinuation, termination, suspension or reduction of the recipient's MA benefits. The fair hearing process is not intended for recipients who wish to lodge complaints against providers concerning quality of services received, nor is it intended for recipients who wish to institute legal proceedings against providers. ...

*Wis. Admin. Code, §DHS 104.01.*

Further, therapy services are not intended to be approved for more than six months periods of time. *See Wis. Admin. Code, §107.17(3)(e)1.*

**Finally, I note for Petitioner that her provider will not receive a copy of this Decision; but Petitioner may provide a copy to the provider if she wants them to have it.**

**CONCLUSIONS OF LAW**

1. That this appeal is untimely and the Division of Hearings and Appeals does not, therefore, have authority to make a determination on the merits of the modification of a prior authorization request.
2. That the Division of Hearings and Appeals has no authority to extend the time period for usage of unused therapy sessions.

**THEREFORE, it is****ORDERED**

That this appeal is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

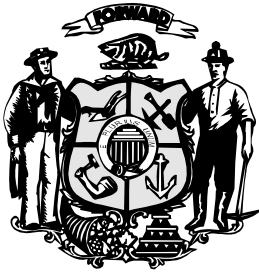
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 23rd day of November, 2015

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 23, 2015.

Division of Health Care Access and Accountability